

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission,
On Its Own Motion

Docket No. 02-0169

Illinois Power Company

Reconciliation of revenues collected
under Coal Tar Riders with prudent
costs associated with coal tar clean
up expenditures.

ILLINOIS POWER COMPANY'S REPLY BRIEF

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ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission, On Its Own Motion)	
)	
vs.)	Docket No. 02-0169
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ILLINOIS POWER COMPANY’S REPLY BRIEF

Pursuant to the schedule adopted by the Administrative Law Judge and § 200.800 of the Commission’s Rules of Practice, Illinois Power Company (“Illinois Power,” “Company” or “IP”) hereby submits its Reply Brief in the above-referenced docket.

I. Introduction and Summary

This case is the annual reconciliation (for the 2001 calendar year) of revenue collected under IP’s Coal Tar Riders with prudent costs associated with coal tar clean-up expenditures. The total amount of incremental costs presented by IP associated with its coal tar clean-up expenditures for the year ended December 31, 2001, was \$1,937,818.31 See IP Exhibit 1.3. Staff and Illinois Power agree that there are only two contested issues in this reconciliation, those being the costs of the EPRI study on background levels of polynuclear aromatic hydrocarbons (hereinafter “PAH Study”) and dues paid to Electric

Power Research Institute (hereinafter “EPRI Dues”) See Initial Brief of the Staff of the Illinois Commerce Commission (hereinafter “Staff’s Initial Brief”), p. 1

With respect to the PAH Study, Staff specifically notes that its proposed “adjustment is not related to the prudence of the cost of the study, but [contends] that the [PAH] Study is a base rate item that should not be recovered through the Riders.” See Staff’s Initial Brief, p. 5 As fully demonstrated by the record, recovery of the PAH Study cost is wholly consistent with Illinois Power’s MGP Riders Although Staff has correctly noted that the underlying purpose of the PAH Study is to influence the Illinois EPA to change its clean-up standards statewide, it fails to consider that the overall purpose of the PAH Study was to reduce the cost associated with Illinois Power’s MGP site clean-ups. Illinois Power’s approach with respect to the PAH Study is consistent with the Commission’s goals of minimizing the MGP clean-up costs to the ratepayers, consistent with safety, reliability and quality assurance. Accordingly, Staff’s proposed disallowance should be rejected.

Staff, in its recommended disallowance for the EPRI membership fees, does not take issue with the prudence of cost; but rather, contends that such cost is appropriately recovered through base rates. See ICC Staff Exhibit 1.00, lines 76-78 The EPRI membership fees are directly related to IP’s MGP clean-up activities and thus, may appropriately be recovered under the Coal Tar Riders.

II. The PAH Study Costs are Consistent with the Guidelines for Recovery under the Illinois Power’s Coal Tar Riders

Staff recommends disallowance of the PAH Study costs because it contends that the costs are not incremental clean-up costs of MGP sites. See Staff’s Initial Brief, p.5.

In support of its disallowance, Staff merely provides that “[t]he PAH Study’s underlying purpose is to influence the EPA to change its clean up standards statewide. It is not to determine the proper clean up activities at an IP MGP site.” See Staff’s Initial Brief, p.5. However, Staff’s assertion is incomplete because it is clear from the record that IP engaged in the PAH Study in an effort to reduce the costs associated with its MGP sites. See IP’s Opening Brief, p. 5; see also IP Exhibit 2.7, lines 137-140. IP will receive no direct benefit from its participation in the PAH Study. See Id. See also IP Exhibit 2.7, lines 126-130. Rather, ratepayers will (through lower Coal Tar Rider charges) benefit if IP’s MGP clean-up costs can be reduced.

Moreover, Staff provides that “[i]t is uncertain what the Illinois EPA will do with the study results” and “[t]he EPA has not yet changed any rules, and the [PAH] Study has not thus far provided for lower clean up costs.” See Staff’s Initial Brief, p. 4-5. Illinois Power does not dispute that Illinois EPA has not yet made the specific changes desired to effectuate its clean-up plan; however, Staff has specifically noted that its disallowance is not related to the prudence of the costs of the PAH Study. See Staff’s Initial Brief, p. 5; see also Illinois Power’s Opening Brief, p. 7 (additional benefits from participating in the PAH Study). In fact, Staff has not raised any issue on whether or not Illinois Power should have engaged in the PAH Study. Accordingly, whether or not Illinois Power’s participation in the PAH Study resulted in the desired Illinois EPA rule modifications is not an issue. However, the record demonstrates that Illinois Power has engaged in a

project with the specific purpose of reducing the MGP costs – consistent with the prudence standard articulated by the Commission¹

Staff provides that Illinois Power's tariff language matters most in determining whether or not the PAH Study is recoverable. Illinois Power agrees.

Under Rider EEA and GEA, Incremental Costs:

[R]efer to all payments by Utility to outside vendors in connection with Environmental Activities associated with the investigation and cleanup of former Manufactured Gas Plants. Such costs also include but are not limited to consultant and legal fees, land acquisition costs, litigation expenses, costs or expenses associated with judgments, orders or decisions (including settlements) by a court, a governmental agency or department, or other adjudicatory or quasi-adjudicatory body related to Manufactured Gas Operations/Sites.

IP's Rider EEA, Ill. C. C. No. 31, Second Revised Sheet No. 65.1; GEA, Ill. C. C. No. 32 Second Revised Sheet No. 40. See also, ICC Staff Exhibit 1.00, lines 54-63

Environmental Activities under the Riders:

[R]efer to the investigation, sampling, monitoring, testing, removal, disposal, storage, remediation or other treatment of residues associated with Manufactured Gas Operations, or with other operations that generated substances subject to federal, state or local environmental

¹The four standards adopted by the Commission in its Order on Rehearing in Docket No. 90-0127, and affirmed in its Order in Docket Nos. 91-0080 through 91-0095, Consolidated are:

- (1) reasonable and appropriate business standards;
- (2) the requirements of other relevant state and/or federal authorities;
- (3) minimization of costs to ratepayers, consistent with safety, reliability and quality assurance; and
- (4) facts and knowledge the Company knew or reasonably should have known at the time the expenditures were made.

See also, ICC Staff Exhibit 1.00, lines 180-191.

laws conducted at locations where Manufactured Gas Plants operated, or dismantling of facilities utilized in Manufactured Gas Operations.

IP's EEA, Ill. C. C. No. 31, Second Revised Sheet No. 65.1; GEA, Ill. C. C. No. 32 Second Revised Sheet No. 40. See also, ICC Staff Exhibit 1.00, lines 65-72.

Staff erroneously provides that "[Illinois Power] appears to believe that the only determining factor is whether or not the cost was paid to an outside vendor." See Staff's Initial Brief, p. 6. Illinois Power has never made such an assertion. See IP Exhibit 2.7, lines 154-169; see also, Revised IP Exhibit 2.10, lines 26-62. Specifically, Staff claimed that certain MGP related costs do not qualify for rate recovery such as Company labor charges for engineering and legal costs. See Staff's Initial Brief, p. 6. Illinois Power agreed that internal legal and engineering costs were not/are not recoverable under the MGP Riders because they were specifically outside the scope of the riders as internal costs. See Revised IP Exhibit 2.10, lines 119-129. Accordingly, Illinois Power noted that a comparison of the PAH Study with these costs was not helpful. Parenthetically, Illinois Power notes that legal costs for outside counsel for MGP insurance recovery litigation, even though not specifically tied to a particular site, but rather, to all of Illinois Power's MGP sites, have been recoverable through the riders. See Revised IP Exhibit 2.10, lines 131-140. The costs are far more analogous to the PAH Study than internal engineering costs.

More importantly, Illinois Power has demonstrated that the PAH Study is an incremental cost as defined by the MGP Riders - an expense "to outside vendors in connection with Environmental Activities associated with the investigation and clean-up of former Manufactured Gas Plants." The record is clear that if it were not for IP's MGP

sites, there would have been no reason for IP to fund this particular study. See IP Exhibit 2.7, lines 155-157. Riders EEA and GEA do not differentiate between costs, or otherwise prohibit recovery, based on the method utilized by the Company in effectuating its clean-up plans. Consistent with its overall MGP clean-up plan and efforts to minimize the MGP clean-up cost, Illinois Power participated in the PAH study to reduce the amount of contaminants that must be managed at its MGP sites. Consistent with the Commission's overall goals of minimizing the MGP clean-up costs to the customers, participation in these types of studies should be encouraged by the Commission. Accordingly, recovery is justified.

Based on the fact that IP engaged in the PAH Study believing that it was the most cost effective method of achieving its clean-up goals associated with its MGP sites and thus, the PAH Study is an incremental cost, the Commission should not adopt Staff's recommendation of disallowing the costs under the Company's Coal Tar Riders.

III. MGP Target Fees may be Recovered Through Illinois Power's Coal Tar Riders

Illinois Power's position regarding the MGP Target Fees is detail in its Opening Brief. In sum, the MGP target fee is directly attributable to Illinois Power's MGP clean-up efforts and cost-savings efforts of Illinois Power. Accordingly, the MGP target fees are an environmental activity consistent with the definition of incremental costs under Illinois Power's Coal Tar Riders.

V. Conclusion

In conclusion, no disallowances are justified for Illinois Power's 2001 reconciliation period of revenue collected under IP's Coal Tar Riders with prudent costs associated with coal tar clean-up expenditures.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Shig. William Yasunaga", is written over a light blue rectangular background.

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